



An
Bord
Pleanála

Inspector's Report

ABP-317272-23

Development	Whether the introduction of pay car parking and associated pay parking machines and signage is or is not development or is or is not exempted development.
Location	Stillorgan Village Centre, (including overflow car park), Lower Kilmacud Road, Stillorgan, Co Dublin.
Declaration	
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	3923
Applicant for Declaration	KW Investment Funds ICAV
Planning Authority Decision	Split Decision
Referral	
Referred by	KW Investment Funds ICAV
Owner/ Occupier	KW Investment Funds ICAV
Observer(s)	None

Date of Site Inspection

24th November 2023

Inspector

Frank O'Donnell

1.0 Site Location and Description

- 1.1. The subject referral site is located at Stillorgan Village Centre, Lower Kilmacud Road, Stillorgan, County Dublin. The site includes the entire Shopping Centre site, associated customer car parks and a separate overflow customer car park to the southwest on the opposite side of the R825 Regional Road. The site is well served by public transport in the form of frequent bus services and is within 1.4 km (21 minutes walking distance) to the north-east of the nearest Luas stop (Stillorgan Luas Stop).
- 1.2. The site is within 160 metres to the west of the planned Bray to Dublin City Centre Bus Connects Project which is the subject of a current Strategic Infrastructure Development (SID) application to the Board, as per case ref. no. ABP-317742-23. This case is due to be decided by 21st February 2024.
- 1.3. Car parking is currently available, free of charge, to customers of the Shopping Centre. A 2-hour parking limit is in place.
- 1.4. The Board should note that, as per planning reg. ref. no. D23A/0424, a notification of decision to GRANT planning permission was issued by the Local Authority on 04th January 2024, subject to 5 no. conditions, for the following development description *'the introduction of paid parking at the Stillorgan Village Centre and overflow car park, along with associated ticket machines and signage'*. It should further be noted that as of 2nd February 2024, no appeal has been received in respect of the said application, reg. ref. no. D23A/0424.

2.0 The Question

- 2.1. The question the subject of the referral before the Board is: -
 - *Whether the introduction of pay parking and associated pay parking machines and signage at the Stillorgan Village Centre and overflow car park is or is not exempted development.*

3.0 Planning Authority Declaration

3.1 Declaration

- 3.1.1. On 13/04/2023, a request for a declaration in accordance with the provisions of Section 5 of the Planning and Development Act, 2000 to 2023, on the above question, was received by Dun Laoghaire Rathdown County Council. The request was made on behalf of KW Investment Funds ICAV.
- 3.1.2. On 09/05/2023, a notification of declaration (SPLIT DECISION) was issued by Dun Laoghaire Rathdown County Council stating that:

“It is considered that: SPLIT DECISION

*The introduction of pay car parking at Stillorgan Village Centre, (including overflow car park), Lower Kilmacud Road, Stillorgan, Co. Dublin **would constitute ‘development’ and would not constitute ‘exempted development’** pursuant to the provisions of Sections 2 and 3 of the Planning & Development Act 2000 (as amended).*

*It is also considered that the provision of pay parking machines and associated identification **signage would constitute ‘development’ and would constitute ‘exempted development’**, pursuant to the provisions of Section 4 (1) (h) of the Planning and Development Act, 2000, as amended; and Class 13, Schedule 2, Part 2 of the Planning and Development Regulations, 2001 (as amended).”*

4.0 Planning Authority Reports

4.1. Planning Report

The Planner’s Report serves as the basis for the declaration decision. It includes the following points:

- The generation of a new revenue stream and the material modification of travel patterns, the Planning Authority is of the opinion that a material change of use in the car park would occur and, therefore, it comprises development.

This is deemed to be consistent with An Bord Pleanála's position in Ref. RL93.300397.

- The provision of pay parking machines and signage is deemed to comprise works which constitute 'development' as defined in the Act.
- It is noted at the outset that Section 4 (1) (h) relates to the carrying out of works to any structure. Since, as discussed above, the introduction of pay parking is not deemed to comprise 'works' to a structure but rather a material change of use, it is not considered to fall under the umbrella of Section 4 (1) (h).
- With regards to use, it is considered that the paid parking nature of the proposal would have implications for parking availability and external effects on parking in nearby streets, and therefore is material.
- No class of development listed under Part 1 of Schedule 2 was identified that related to the provision of paid parking.
- Hence, the introduction of paid parking is considered to be development and is not exempted development.
- Under the broad definition ('Structure' as set out in Section 2 (1) of the Planning and Development Act, 2000, as amended) the car park is deemed to be a structure as it is a thing made on land.
- From that perspective, the provision of ticket machines could be considered to fall under s.4 (1) (h) of the Planning Act as an alteration of the car park which does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure. It is noted in that regard that the Applicant has not submitted plans or elevations showing the dimensions of the ticket machines, just indicative locations of the machines (8 locations shown in total) hence the visual implications of same are not evident. However, there does not seem to be

much variation between the dimensions of ticket machines generally, for which the applicant has provided some indicative photos, and the Planning Authority is satisfied that 8 No. of those machines of a similar appearance to those shown in the documentation provided would not affect the external appearance of the car park.

- The provision of 8 No. pay parking machines is considered development and is exempted development.
- The provision of signage for the purposes of identification of the car park as a pay car park is considered to fall under the provision of Class 13.
- The Planning Authority is satisfied that the erection of signage small than 0.3 sqm for the purposes of identification of the car park as a pay car park would be development and exempted development.
- A **SPLIT DECISION** is recommended.
- It is considered that:
 - The introduction of pay car parking at Stillorgan Village Centre, (including overflow car park), Lower Kilmacud Road, Stillorgan, Co Dublin would constitute **‘development’ and would not constitute ‘exempted development’** pursuant to the provisions of Sections 2 and 3 of the Planning & Development Act 2000 (as amended).
 - It is also considered that the provision of pay parking machines and associated identification signage would constitute ‘development’ and **would constitute ‘exempted development’**, pursuant to the provisions of Section 4 (1) (h) of the Planning and Development Act 2000, as amended; and Class 13, Schedule 2, Part 2 of the Planning and Development Regulations, 2001 (as amended).

5.0 Planning History

- 5.1. **D23A/0424:** The proposed development will comprise the introduction of paid parking at the Stillorgan Village Centre and overflow car park, along with associated ticket machines and signage. **A Notification of Decision to GRANT** issued on 04/01/2024. (5 no. conditions). It should further be noted that as of 2nd February 2024, no appeal has been received in respect of the said application, reg. ref. no. D23A/0424.
- 5.2. **D18A/0504:** New signage and reinstated signage at units occupied by Cafe, a Diner and restaurant. The application is made in accordance with Condition 3 attached to An Bord Pleanála Order Ref. PL06D.246832 (DLRCC Reg. Ref. D16A/0271). The total area of signage applied for equates to 70.15 sqm. **GRANTED** on 23rd August (3 no. conditions).
- 5.3. **D18A/0191:** New replacement shopfronts at certain commercial units. No additional floorspace. (The application is made in accordance with Condition 3 attached to the final grant of planning permission Reg. Ref.: D16A/0271, ABP Ref.: PL06D.246832, dated 21st October 2016). **GRANTED** on 30th May 2018 (4 no. conditions).
- 5.4. **D17A/0774:** Amendments to the permitted development under Reg. Ref: D15A/0392 and D16A/0271 (ABP Ref. PL06D.246832). **GRANTED** on 30th November 2017. (3 no. conditions).
- 5.5. **D16A/0293:** Amendments to a permitted development under Reg. Ref. D12A/0289 (An Bord Pleanála Ref: PL06D.241807). **GRANTED** on 14th September 2016 (19 no. conditions).
- 5.6. **D16A/0271 (Appeal Ref. no. PL06D.246832):** Amendments to the permitted development under Reg. Ref. D15A/0392 for upgrade and refurbishment of Stillorgan Village Centre. **GRANTED** on 21st October 2016. (9 no. conditions).
- 5.7. **D15A/0392:** Internal and external upgrade and refurbishment works, extensions to provide an overall additional gross floor space of 443 sqm, reconfiguration of car park and entrances. Vehicle Messaging System signs at 4 no. locations. Removal/relocation of all existing signage and provision of a common signage strategy for the Centre, hard and soft landscaping and lighting. **GRANTED** on 10th September 2015. (26 no. conditions).

- 5.8. **D12A/0289 (Appeal Ref. No. PL06D.241807):** Two-storey extension to existing Shopping Centre. **GRANTED** on 31/10/2013. (8 no. conditions).
- 5.9. **D11A/0200:** Retention for minor alterations made to the car park including a reconfiguration of the layout and the reduction in the number of spaces. **GRANTED** on 7th July 2011. (4 no. conditions).

Section 5 Referrals

Adjacent Site to the North

- 5.10. **7022 (Referral Ref. no. ABP-314387-22):** Whether the provision of temporary on-sites structures used as site offices is or is not development or is or is not exempted development? **An Bord Pleanála decision issued on 19th January 2024: Is development and is not exempted development.**

6.0 Relevant Precedent Referrals

- 6.1. **ABP-300396-17:** The Board determined that the replacement of existing barrier and addition of pay/ticket machine to existing car park **is development and is not exempted development**, as a change of use had occurred and that as per the Boards decision in referral case Ref. ABP-300397-17, this change of use is material.
- 6.2. **ABP-300397-17:** The Board determined that the use of existing carpark used by the public as a public car park **is development and is not exempted development**, as the current use of the land as a public car park represents a new and separate business which has no connection to the primary use of the site as a commercial/office building, most recently in use as a bank and that a change of use has, therefore, occurred, the current use of the site as a public car park represents a new and separate business which has no connection to the primary commercial/office use of the site and is, therefore, a material change of use, the change of use of the land to car parking with a daily or hourly basis for charging, is likely to generate an increased intensity of use which is materially different to the use as parking incidental to the primary commercial/office use, due to alterations to the level and pattern of traffic and hours of operation, and is, therefore, a material change of use, and the said material change of use is development which does not

come within the exempted development provisions of the Planning and Development Acts, 2000-2018 or of the Regulations made thereunder.

- 6.3. **RL3394:** The Board determined that the change of use of a commercial car park used in connection with car repairs to use as a park and ride commercial car park facility connected with Shannon Airport **was development and was not exempted development** as a change of use had occurred and that this change of use was material by reason of the different function served and the change in the pattern of activity at the site.
- 6.4. **RL3071:** The Board determined that the use of a car compound / parking area previously associated with a car hire business as a public car park **was development and was not exempted development** on the basis that a material change of use of the site had occurred such that there would be a change in activity and vehicular patterns on the site.
- 6.5. **RL2883:** The Board determined that the use of a premises (warehouse) previously used as a car dealership as a public car park **was development and was not exempted development** on the basis that a material change of use had occurred.
- 6.6. **RL2758:** The Board determined that the use of land to the rear of two protected structures, one of which had permission to be used for parking ancillary to an educational use, as a commercial car park **was development and was not exempted development** for reasons that included that the change to a commercial (charge) use would likely generate an increased intensity of use and that the use as a commercial car park constituted a new and separate business with no connection to the primary use of the site and would have materially different traffic and parking patterns from the use as parking area incidental to the primary use. A material change in the use of the site was therefore considered to have occurred.
- 6.7. **RL2753:** The Board determined that the change in the use of a permitted car park from use solely connected with the residential / commercial activity on the site to use as a public car park **was development and was not exempted development** as a material change of use had occurred arising from the implications for parking availability and external effects on parking in nearby streets.

6.8. **RL2692:** The Board determined that Board determined that the charging for parking after a specific two-hour period within an existing basement car park serving a mixed use residential / commercial development in Cork City **was development and was not exempted development.** Decision based on fact that parking provision in development based on an assessment of the requirements to serve the uses on site and that charging for parking reduced the parking availability for intended users and encouraged use by members of the public including for car borne commuting. The change in the nature and pattern of use of the car park was such that a material change of use had occurred.

7.0 Policy Context

7.1. Dun Laoghaire Rathdown County Development Plan, 2022 to 2028

7.1.1. The subject referral site is located within the defined development boundary of the Stillorgan Local Area Plan which forms part of the Dun Laoghaire Rathdown County Development Plan, 2022 to 2028. The Appeal site is ascribed land use zoning '*DC - To protect, provide for and-or improve mixed-use district centre facilities.*' The following Specific Local Objectives are shown on the referral site:

- Objective 15: To accord with the policies of the adopted Stillorgan Local Area Plan.
- Objective 21: To support and facilitate the provision of a swimming pool, leisure facility and Library within the Stillorgan area.

7.2. Natural Heritage Designations

7.2.1. The referral site does not form part of, it does not adjoin, nor is it located within close proximity to any designated Natura 2000 site.

7.3. EIA Screening

7.3.1. The referral relates to introduction of pay car parking and associated pay parking machines and signage. This type of development does not constitute an EIA project and so the question as to whether or not it might be sub-threshold does not arise.

8.0 The Referral

8.1 Referrer's Case

- 8.1.1. As part of the Referrers case, reference is made to a precedent Board Case, ref. no. ABP-300397-17. In this case, the Board determined that the use as a public pay car park of an area previously used for parking associated with a commercial/office premises at the former Bank of Ireland premises, Parnell Street/The Applemarket, Waterford is development and is not exempted development.
- 8.1.2. The Referrer considers that the parking on the subject site would remain ancillary to the existing commercial use on site (Stillorgan Village Centre), and therefore there would be no change of use. The car park will remain connected to the primary use of the site and would not constitute a new and separate commercial enterprise.
- 8.1.3. There is an acknowledgement on behalf of DLRCC that there would unlikely be an intensification of use, thereby notwithstanding that, in contrast to the Referrer's opinion, DLRCC consider there to be a change of use, DLRCC should not have assessed there to be a material change of use.
- 8.1.4. The Referrer considers that it appears DLRCC consider that a modification of travel patterns, albeit acknowledged as likely for the better, results in a material change of use. The Referrer submits that that the test of materiality would be if there were an intensification of the use, rather than a modification.
- 8.1.5. The subject proposal does not result in an intensification of use, as the introduction of pay parking may discourage certain customers from utilising the car park, instead utilising more sustainable modes of transport such as public transport (along the N11 corridor), walking or cycling.
- 8.1.6. The introduction of pay parking would likely discourage any potential commuter-based parking which may occur. The Referrer considers that there would not be an intensification of use and therefore if the Board considered there to be a change of use, it is respectfully submitted it would not be a material change of use.
- 8.1.7. The Referrer submits that the introduction of pay car parking does not constitute development and therefore no exempted development provisions, such as that provided under Section 4 (1) (h) are required.

8.1.8. The introduction of pay parking would not constitute a material change of use as the purpose of the parking will remain for the use of customers of the Stillorgan Village Centre.

8.2. **Owner/ occupier's response**

8.2.1. None.

8.3. **Further Responses**

8.3.1. None.

9.0 **Statutory Provisions**

9.1. **Planning and Development Act, 2000 to 2023**

9.1.1. **Section 2: Interpretation**

“**land**” includes any structure and any land covered with water (whether inland or coastal);

“**public place**” means any street, road, seashore or other place to which the public have access whether as of right or by permission and whether subject to or free of charge;

“**public road**” has the same meaning as in the Roads Act, 1993;

“**structure**” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and— (a) where the context so admits, includes the land on, in or under which the structure is situated,

“**works**” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

9.1.2. **Section 3: Development**

Section 3 (1) a) states “development” means, a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land,

9.1.3. **Section 4: Exempted Development**

Section 4 1) provides that specified development shall be exempted development for the purposes of the Act.

9.1.4. Section 4 1) h) states *‘development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures’*,

9.2. **Planning and Development Regulations, 2001 to 2023**

9.2.1. Article 6 – Exempted Development

Article 6 1) states that Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

9.2.2. Article 9 - Restrictions on Exemptions

Article 9 1) states that:

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

9.2.3. Article 10 (1) - Change of Use

Article 10 (1) states that:

Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

9.2.4. Class 13 of Part 2, Schedule 2

Class 13	Conditions/ Limitations
Advertisements for the purposes of identification, direction or warning with respect to the land or structures on which they are exhibited.	No such advertisement shall exceed 0.3 square metres in area.

10.0 Assessment

10.1. The question before the Board is

- *Whether the introduction of pay parking and associated pay parking machines and signage at the Stillorgan Village Centre and overflow car park is or is not exempted development.*

10.2. **Is or is not development?**

10.2.1. Having regard to the definitions set out under Section 2 of the Act, the introduction of pay parking machines and signage constitutes an act or operation of construction and therefore is considered to be "works". The carrying out of works, i.e., pay

parking machines and signage constitutes "development" as defined under Section 3 (1) of the Act.

- 10.2.2. In addition, a key issue in this case is also whether or not the use of land as a pay car park constitutes a change of use of the land in the first instance and, if so, whether such a change of use represents a material change of use.
- 10.2.3. The subject referral site comprises the main Shopping Centre site, including incidental car parking areas and a separate overflow car park on the southern side of the Lower Kilmacud Road. In my opinion, the subject car parks are, at present, ancillary to the main commercial Shopping Centre use.
- 10.2.4. The said car parks are in use, free of charge, by the customers of the Shopping Centre. I would agree with the assessment of the Local Authority that the introduction of pay parking would result in a new revenue stream that didn't exist previously.
- 10.2.5. I would further agree that this new revenue stream would become a commercial enterprise on its own merit which is distinct from the primary function of the site as a Shopping Centre and is not an ancillary function. In my view, this is a new and separate business and therefore represents a change of use.
- 10.2.6. The question therefore arises as to whether such a change of use represents a material change of use.
- 10.2.7. The Referrer states they whilst they understand that it is not a prevalent issue due to existing parking enforcement, the proposal would discourage the use of the car park by members of the public who are not visitors to the shopping centre. The existing customer car parks operate on a 2-hour time limit. There is nothing in the available documentation which confirms that a similar time restriction will be applied, that the same parking enforcement will be employed in respect of a 2-hour time limit, (although it is accepted that parking enforcement would be undertaken on the ground in person), or that members of the public, who are not customers of the Shopping Centre, will be entirely precluded from availing of the car park.
- 10.2.8. In the absence of any definitive information to the contrary, it is my view, and it makes commercial sense, that on payment of the required fee, a member of the public could theoretically park for an extended period beyond a 2-hour time limit or

indeed beyond the opening hours of the Shopping Centre. The Referrer acknowledges that commuter-based parking may currently occur. There is nothing to indicate the car parks will close at the same time as the Shopping Centre. It is further noted from the documentation that the introduction of barriers to control entering or exiting the car park is not proposed. In the absence of any definitive information to the contrary, the car parks could, in my opinion, operate on an extended 24-hour basis.

10.2.9. The proposed use of the site/s as pay car park/s, with no apparent definitive time limits proposed and with no clear restriction of their use solely to customers of the Shopping Centre, will serve to encourage the use of the car parks by other members of the public, particularly commuters, with no other connection to the Shopping Centre. This, in my opinion, represents a material change of use.

10.2.10. In addition, the materiality test applied under a similar precedent referral case, ref. no. ABP-300397-17, relates to Case Law (Galway CC v Lackagh Rock Ltd) and to the findings of Barron J where the following quote is provided:

“To test whether or not the uses are materially different it seems to me that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made either for the use on the appointed day or for the present use. If these matters are materially different, then the nature of the use must be materially different.”

10.2.11. I agree with the assessment of the Planning Authority that the introduction of pay parking would modify travel patterns of members of the public.

10.2.12. The Board will note that under planning reg. ref. no. D23A/0424, the main matters raised as part of the assessment of the Planning Authority are the Principle of the Development, Climate Action, Land Use, Visual Impact and Location of Ticket Machines, Transportation/ Parking and Third-Party issues.

10.2.13. In particular, and with specific regard to the issues of Transportation & Parking, the Planning Authority consider the introduction of pay parking is in line with National Policy, as well as the County Development Plan and that the proposal will *‘discourage commuter use of the subject car park, as well as encouraging people within reasonable and viable active travel/ public transport distance of the subject site to avail of those alternative options.’* Specific reference is made in the

assessment to Development Plan Policy Objective T4 (Development of Sustainable Travel and Transport), Policy TM8 of the Greater Dublin Area Transport Strategy (2022 – 2042, National Transportation Authority) and to a submission from the National Transportation Authority (NTA).

10.2.14. In my view, the Planning Authority, as part of its assessment of said planning application, has had regard to materially different considerations as opposed to a proposal for free car parking ancillary to a primary Shopping Centre use.

10.2.15. Applying the same materiality test to that of referral case, ref. ABP-300397-17, it is my opinion that the introduction of pay parking represents a material change of use and therefore constitutes development within the meaning of the Act.

10.3. **Is or is not exempted development?**

10.3.1. Material Change of Use

10.3.2. The legislation does not include any provision to exempt a material change of use from car parking which is incidental to the primary purpose of a building to pay car parking. A car park does not fall within Article 6 (exempted development) of the Planning and Development Regulations 2001 to 2023, nor is it included in any of the classes of use specified in Part 4 of Schedule 2 of the Regulations. Therefore, the exemptions under Article 9 and Article 10 of the Regulations are not in my opinion relevant to the said material change of use.

10.3.3. Parking (Ticket) Machines

10.3.4. The Referrer is proposing to introduce a total of 8 no. parking machines. An indicative site plan presented in Section 5.0 of the Planning Report, lodged in support of the initial Section 5 Declaration Application, shows 6 no. machines within the main Shopping Centre Car Park and 2 no. machines in the overflow Car Park. A sample image of the machines is shown on page 6 of the same Report.

10.3.5. Having regard to the provisions of Section 4 1 h) of the Planning and Development Act, 2000 to 2023, it is my opinion that the introduction of the proposed 8 no. parking machines, in the first instance, constitutes 'development' consisting of the carrying out of 'works'. The subject car park/s, in my opinion, fall within the definition of a 'Structure' as set out in Section 2 1) of the Act, as they are constructed on land.

10.3.6. The said works, i.e., the introduction of 8 no. parking machines will result in the alteration of the subject structure/s. The works, although not located within the interior of a structure, nevertheless do not, in my opinion, materially affect the external appearance of the structure, so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

Therefore, having regard to the provisions of Section 4 1 h) of the Act and to the restrictions on exemption as set out in Article 9 of the Planning and Development Regulations, 2001 to 2023, I am satisfied that the introduction of the 8 no. parking machines, as proposed, is exempted development.

10.3.7. Signage

10.3.8. The Referrer states in Section 5.4 of the Planning Report lodged in support of the initial Section 5 Declaration Application that *'Advisory signage would be put in place in relation to the paid parking. There are currently signs located within the car park advising on parking control measures. The signs have not been finalised; however it is confirmed they will be no larger than existing, ..'* An image of an example of existing Parking Information Signage is also presented in Section 5.4 of the said Report. The Planning Authority consider the relevant existing signage to be below 0.3 sqm in area.

10.3.9. Having regard to Class 13 of Schedule 2, Part 2 of the Planning and Development Regulations, 2001 to 2023 and to the restrictions of exempted development as set out in Article 9 of the same Regulations, I am satisfied that the replacement signage, as proposed, is exempted development.

10.4. Other matters

- Appropriate Assessment

10.4.1. I am satisfied that no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

11.0 Recommendation

11.1. I recommend that the Board should decide this referral in accordance with the following draft order.

11.2. **WHEREAS** a question has arisen as to whether the introduction of pay car parking and associated pay parking machines and signage at the Stillorgan Village Centre and overflow car park is or is not development or is or is not exempted development.

11.3. **AND WHEREAS** KW Investment Funds ICAV requested a declaration on this question from Dun Laoghaire Rathdown County Council and the Council issued a **Split Decision** on the declaration on the 9th day of May 2023 stating that:

- The introduction of pay car parking at Stillorgan Village Centre, (including overflow car park), Lower Kilmacud Road, Stillorgan, Co. Dublin would constitute 'development' and would not constitute 'exempted development' pursuant to the provisions of Sections 2 and 3 of the Planning & Development Act 2000 (as amended).
- It is also considered that the provision of pay parking machines and associated identification signage would constitute 'development' and would constitute 'exempted development', pursuant to the provisions of Section 4 (1) (h) of the Planning and Development Act 2000, as amended; and Class 13, Schedule 2, Part 2 of the Planning and Development Regulations, 2001 (as amended).

11.4. **AND WHEREAS** KW Investment Funds ICAV referred this declaration for review to An Bord Pleanála on the 6th day of June 2023:

11.5. **AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to -

- a) Section 2(1) of the Planning and Development Act, 2000 to 2023,
- b) Section 3(1) of the Planning and Development Act, 2000 to 2023,
- c) Section 4 of the Planning and Development Act, 2000 to 2023,
- d) Articles 6(1), 9(1) and 10(1) of the Planning and Development Regulations, 2001 to 2023,

- e) Class 13 of Part 2 of Schedule 2 of the Planning and Development Regulations 2001 to 2023,
- f) The planning history of the site,
- g) The nature of the current use as car parking for customers of the primary use of the site as a commercial Shopping Centre,
- h) The pattern of development in the area,
- i) The report of the Inspector.

11.6. **AND WHEREAS** An Bord Pleanála has concluded that:

- a) the introduction of pay parking and pay parking machines and signage is 'development' within the meaning of the Planning and Development Act 2000 to 2023;
- b) the subject car parks are ancillary to the main commercial Shopping Centre use, the car parks are in use, free of charge, by customers of the Shopping Centre, the introduction of pay parking represents a new revenue stream that didn't exist previously, this new revenue stream would become a commercial enterprise on its own merit, which is distinct from the primary function of the site as a Shopping Centre, is not an ancillary function and is a separate business which has no connection to the primary use and that a change of use will therefore occur;
- c) the existing customer car parks operate on a 2-hour time limit, there is nothing which confirms that a similar time restriction will be applied or that the same parking enforcement will be employed in respect of a 2-hour time limit, that members of the public, particularly commuters, who are not customers of the Shopping Centre, will be entirely precluded from availing of the car park, that on payment of the required fee, a member of the public cannot park for an extended period beyond a 2-hour time limit or indeed beyond the opening hours of the Shopping Centre, and is therefore a material change of use, which is development,
- d) the Planning Authority, as part of its assessment of planning reg. ref. no. D23A/0424, has had regard to materially different considerations as opposed to a proposal for free car parking ancillary to a primary Shopping Centre use,

and that the introduction of pay parking represents a material change of use and therefore constitutes development within the meaning of the Act, and

- e) the said material change of use is development which does not come within the exempted development provisions of the Planning and Development Acts, 2000 to 2023 or the regulations made thereunder and is therefore not exempted development;
- f) the introduction of pay parking machines is exempted development under Section 4 1 h) of the Planning and Development Act, 2000 to 2023;
- g) the replacement signage, as proposed, is exempted development under Class 13 of Schedule 2, Part 2 of the Planning and Development Regulations, 2001 to 2023.

11.7. **NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the Planning & Development Act, 2000 to 2023, hereby decides that the introduction of pay parking and associated pay parking machines and signage is 'development', that the introduction of pay parking is not exempted development and that the introduction of pay parking machines and signage is exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Frank O'Donnell
Planning Inspector
02nd February 2024